

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW PETERSON, et al.,

Plaintiffs,

v.

THOMSON INT'L, INC.,

Defendant.

Case No. 1:22-cv-00701-JLT-CDB

ORDER RE: REQUEST FOR RESOLUTION  
OF DISPUTED ISSUES

(Doc. 39)

Following a mid-discovery status conference on February 8, 2023, the Court entered an order addressing several ongoing discovery-related issues the parties brought to the Court's attention. (Doc. 36). The parties attempted to resolve the issues but ultimately filed a document titled "Request for Court Resolution of the Disputed Issues" in which they presented competing views of remaining issues and requested the Court's intervention. (Doc. 39). The Court convened a status conference with the parties on March 15, 2023, to further discuss the issues, and afterwards invited the parties to file supplemental briefing in the event the parties did not resolve the remaining issues. (Docs. 43-44).

On March 21, 2023, the parties filed a supplemental brief and again requested the Court resolve one remaining issue relating to cost-sharing in connection with Thomson's production of third-party documents, most of which it obtained after receiving authorizations from individual Plaintiffs to obtain certain records. (Doc. 45).

1 The Court commends the parties' counsel for their significant efforts that resulted in their  
2 resolving disputes relating to a protective order and Plaintiffs' authorizations without Court  
3 intervention, and separately, for briefing and narrowing the remaining discovery dispute that the  
4 Court addresses below.

5 **Background**

6 Plaintiffs are eight individuals from three different states and Canada that allege during  
7 June and July 2020, they suffered damages after consuming Salmonella-contaminated onions that  
8 Thomson introduced into the stream of commerce. They seek recovery for medical and  
9 psychological care, lost income and pain and suffering. Plaintiffs claim Thomson is strictly liable  
10 for selling an unreasonably dangerous and defective food product, and that Thomson may also be  
11 liable under breach of warranty, negligence, and negligence per se theories of recovery. Thomson  
12 contends its onions were not contaminated while in its possession, custody and control and it did  
13 not cause any Salmonella outbreak that harmed Plaintiffs.

14 With the benefit of authorizations voluntarily provided by Plaintiffs to Thomson at its  
15 request, Thomson has obtained from third parties medical and employment records relating to  
16 Plaintiffs. Thomson has declined to provide copies of the records to Plaintiffs in response to their  
17 discovery requests on the grounds that Plaintiffs "refuse to contribute and want the third party  
18 documents for free." (Doc. 45 at p.3). Thomson contends that Plaintiffs have sufficient recourse  
19 to obtain the same documents directly from the third parties, but instead "want a copy of their  
20 medical records for free to prepare for depositions and expert discovery, to litigate their claims  
21 against defendant." *Id.* at p.2.

22 **Legal Standard**

23 "The purpose of discovery is to make trial less a game of blind man's bluff and more a  
24 fair contest with the basic issues and facts disclosed to the fullest extent possible, and to narrow  
25 and clarify the issues in dispute." *Jadwin v. Cnty. Of Kern.*, No. 1:07-cv-0026-OWW-TAG, 2008  
26 WL 2025093, \*1 (E.D. Cal. May 9, 2008) (quotation and citations omitted). Litigants are entitled  
27 to seek from each other discovery of information that is "relevant to the claim or defense of any  
28 party." Fed. R. Civ. P. 26(b). "The party who resists discovery has the burden to show that

discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objection.” *Jadwin*, 2008 WL 2025093, at \*1. (quotation and citations omitted).

In response to a party’s request for production of documents, the receiving party “is obliged to produce all specified relevant and nonprivileged documents or other things which are in its ‘possession, custody or control’ on the date specified in the request.” *Id.* (quoting Fed. R. Civ. P. 34(a)).

### **Discussion**

Here, it does not appear Thomson contests the documents at issue are “relevant” and subject to discovery under Rules 26 and 34 – indeed, it presumably sought and obtained the documents from third parties because it considers them relevant to either or both Plaintiffs’ claims or its own defenses.<sup>1</sup> Instead, the singular issue is Thomson’s refusal to produce records it obtained unless and until Plaintiffs agree to share in defraying the costs associated with obtaining the records.

“Under the discovery rules, the presumption is that the responding party must bear the expense of complying with discovery requests, but may involve the district court’s discretion under Rule 26(c) to grant protective orders protecting him from undue burden or expense in doing so, including orders conditioning discovery on the requesting party’s payment of the costs of discovery.” *Jadwin*, 2008 WL 2025093, at \*5 (quotation and citations omitted). “Cost-shifting should only be ordered when discovery imposes an ‘undue burden or expense’ that outweighs the likely benefits of the discovery and after consideration of all relevant factors.” *Id.*

The Court acknowledges authority cited by Thomson and other authority that permits the Court under appropriate circumstances to direct cost-sharing along the lines Thomson seeks here. But the cases Thomson cites are distinguishable from the case at hand. Thus, for instance, in *Jadwin* (see Doc. 39 at p. 4; Doc. 45 at p. 4), although the Court ordered reimbursement of reproduction costs, it appears the parties generally reached a stipulation regarding the terms of

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<sup>1</sup> Although Thomson reportedly objected to producing documents it provided to its experts on, among other things, attorney-client privilege and work-product doctrine grounds, the Court presumes that objection would dissolve were Thomson instead ordered to produce *all* documents it sought and obtained from third parties relating to Plaintiffs’ medical and employment history.

1 reimbursement and the Court merely ordered cost-sharing consistent with the parties' agreement.  
2 2008 WL 2025093, at \*5. Similarly, in *Mauna Kea Resort, LLC, v. Affiliated FM Ins. Co.* (see  
3 Doc. 39 at p. 4; Doc. 45 at p. 5), the Court directed the propounding party to pay approximately  
4 half of the costs the producing party incurred in obtaining third-party documents; however,  
5 similar to the facts in *Jadwin*, the parties agreed to share the costs in advance. 2009 WL  
6 10677170, \*3 (D. Haw. Mar. 3, 2009).

7 In *re Asbestos Prods. Liability Litig.*, (see Doc. 39 at p. 4; Doc. 45 at p. 4), the Court  
8 directed defendants to share pro-rata in plaintiff's costs of obtaining third-party documents. 2011  
9 WL 6150640, \*1-2 (E.D. Pa. Dec. 9, 2011). However, the Court's opinion does not cite,  
10 acknowledge or analyze governing authority (e.g., Rules 26(b) & (c)) requiring a consideration of  
11 whether production without cost-shifting imposes an "undue" burden, whether any burden is  
12 outweighed by the benefits of discovery, and a consideration of all other relevant factors.

13 Here, the Court finds Thomson has not met its burden of demonstrating that the balance of  
14 relevant factors under Rule 26 trumps the presumption that parties shoulder their own costs  
15 associated with complying with discovery obligations. Thus, it is not clear from Thomson's  
16 filings precisely what total amount of proposed costs to be shared are at issue and, thus, whether  
17 the costs are unduly burdensome. The Court's balancing takes into account the fact that Plaintiffs  
18 voluntarily provided authorizations that facilitated Thomson's ability to request and obtain the  
19 documents (thus, reducing the burden). In sum, while Thomson's efforts to obtain the documents  
20 at issue were burdensome, the Court cannot conclude that the burden was undue such that costs  
21 should be shared.<sup>2</sup>

22 Accordingly, it is HEREBY ORDERED that Thomson's request for an order requiring  
23 Plaintiffs to share the costs that Thomson incurred in connection with requesting from third  
24 parties the records at issue in this dispute is DENIED.

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28 <sup>2</sup> The Court notes that, in the event Thomson is a prevailing party in this litigation, it will retain recourse to a bill of costs pursuant to Fed. R. Civ. P. 54(c) and 28 U.S.C. § 1920.

1 It is FURTHER ORDERED that Thomson produce the records at issue in this dispute and  
2 which are called for by Plaintiffs' discovery requests with any remaining, asserted objections  
3 within seven days of the date of this Order.

4 IT IS SO ORDERED.

5 Dated: March 23, 2023

  
UNITED STATES MAGISTRATE JUDGE